

The claimant alleges he suffered accidental injury on October 10, 1996, arising out of and in the course of his employment. Respondent denies that allegation and suggests that claimant's current symptoms result from an earlier accidental injury in the course of employment for another employer. The evidence includes records for the medical treatment of claimant's low back injury in late 1996. The record also shows claimant's treating physician, Kris Lewonowski, M.D., released claimant with no restrictions on April 7, 1997. A preliminary hearing was held April 22, 1997, on the basis of an Application for Preliminary Hearing filed February 11, 1997. The Order by the Administrative Law Judge does not explain why he denied benefits except that it notes claimant was released on April 7, 1997, with no restrictions. The Board considers it most reasonable to construe this statement as the basis for the decision. A decision to deny benefits based upon a release by treating physician does not exceed the jurisdiction of the Administrative Law Judge. An appeal challenging that decision does not raise a jurisdictional issues.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge John D. Clark, dated April 22, 1997, should, and does, remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director